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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Yolo)

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In re A. T., a Person Coming Under the Juvenile  
Court Law.

YOLO COUNTY DEPARTMENT OF  
EMPLOYMENT AND SOCIAL SERVICES,

Plaintiff and Respondent,

v.

J. T.,

Defendant and Appellant.

C071893

(Super. Ct. No. JV10329)

J.T., father of minor A.T., appeals from orders terminating his parental rights.  
(Welf. & Inst. Code, §§ 366.26, 395.)<sup>1</sup> Father contends the juvenile court did not inquire  
about father's Indian heritage in violation of the Indian Child Welfare Act (ICWA) (25

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<sup>1</sup> Undesignated statutory references are to the Welfare and Institutions Code.

U.S.C. § 1901 et seq.). Respondent Yolo County Department of Employment and Social Services agrees. We will reverse the orders of the juvenile court to permit compliance with ICWA requirements for inquiry and notice.

### BACKGROUND

Two-year-old A.T. was removed from parental custody in August 2010 due to mother's substance abuse and mental health problems. Father was in custody at the time and remained in custody throughout the proceedings. The social worker interviewed mother but did not interview father. Mother did not claim any Indian heritage.

Father first appeared at the disposition hearing. He was not asked about Indian heritage and he waived reunification services. The juvenile court adopted a finding that ICWA did not apply and ordered reunification services for mother. Mother failed to reunify and her services were terminated in November 2011. The juvenile court subsequently terminated parental rights.

### DISCUSSION

Father contends he has Cherokee and Cree heritage but the juvenile court did not inquire about his Indian heritage in violation of ICWA.

ICWA protects the interests of Indian children and promotes the stability and security of Indian tribes by establishing minimum standards for, and permitting tribal participation in, dependency actions. (25 U.S.C. §§ 1901, 1902, 1903(1), 1911(c), 1912.) The juvenile court and the social worker have an affirmative duty to inquire at the outset of the proceedings whether a child who is subject to the proceedings is, or may be, an Indian child. (§ 224.3, subd. (a); Cal. Rules of Court, rule 5.481(a).)

“At the first appearance by a parent . . . in any dependency case . . . the court must order the parent, . . . if available, to complete *Parental Notification of Indian Status* (form ICWA-020).” (Cal. Rules of Court, rule 5.481(a)(2).) “If the parent . . . does not appear at the first hearing, or is unavailable at the initiation of a proceeding, the court must order the person or entity that has the inquiry duty under this rule to use reasonable diligence to

find and inform the parent . . . that the court has ordered the parent . . . to complete *Parental Notification of Indian Status* (form ICWA-020).” (Cal. Rules of Court, rule 5.481(a)(3).)

Our review of the record in this case indicates that the juvenile court did not make the necessary ICWA inquiry of father at his first appearance, did not order father to complete the ICWA-020 form, and did not order respondent to use reasonable diligence to inform father that he was ordered to complete the form. The error is not harmless because father claims Indian heritage.

#### DISPOSITION

The orders of the juvenile court terminating parental rights are reversed and the matter is remanded to permit the juvenile court and respondent to make the necessary inquiry regarding father’s Indian heritage and, if applicable, to provide notice as required by ICWA. If, after proper inquiry and notice, it is determined that the minor is not an Indian child, the orders of the juvenile court shall be reinstated. But if a tribe determines the minor is an Indian child as defined by ICWA and the juvenile court determines ICWA applies in this case, the juvenile court shall conduct a new section 366.26 hearing in compliance with ICWA.

\_\_\_\_\_, J.  
MAURO

We concur:

\_\_\_\_\_, Acting P. J.  
BLEASE

\_\_\_\_\_, J.  
HOCH